

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE PET FOOD PRODUCTS :
LIABILITY LITIGATION : MDL DOCKET NO. 1850
: CASE NO. 07-2867 (NLH-AMD)
: HON. NOEL L. HILLMAN
:
:
: **DECLARATION OF ADRIAN**
: **PALENSKY OF NESTLÉ PURINA**
: **PETCARE COMPANY IN**
: **SUPPORT OF DEFENDANTS'**
: **MOTION TO LIMIT THE**
: **RETENTION OF RECALLED PET**
: **FOOD AND RAW WHEAT**
: **GLUTEN**

STATE OF MISSOURI)
) ss:
COUNTY OF ST. LOUIS)

Adrian Palensky, being first sworn upon oath, says:

1) I am the Director of Quality Assurance - Canned Pet, for Defendant Nestlé Purina PetCare Company ("Nestlé Purina"). I am making this Declaration based upon personal knowledge and am competent to testify to the matters stated below.

2) In my position as Director of Quality Assurance - Canned Pet, for Nestlé Purina, my duties and responsibilities include, among other things, oversight of storage and storage security for recalled wet pet food.

3) In March, April and May 2007, there were recalls of several brands of pet food by several manufacturers, including Nestle Purina, that may have been tainted with

Exhibit 5

DE 08726060001 15119643

contaminated wheat gluten. As a result of the recalls, a tremendous amount of wet pet food was returned to, or never shipped by, Nestlé Purina. Nestlé Purina has approximately 449,633 cases of such pet food that it is currently storing at locations in Atlanta, GA, Lincoln, NE, Allentown, PA, Denver, CO, Davenport, IA, Oklahoma City, OK, Flagstaff, AZ, Clinton, IA, Mechanicsburg, PA, and Dunkirk, NY.

4) Such of that product that was never shipped is identified by product type (or "SKU") and date of manufacture (collectively, "SKU date"). It is stored in cases and stacked on full or partial pallets. Certain product that was shipped and returned as a result of the recalls was returned to Nestlé Purina in cases stacked on full or partial pallets. That product is identified by SKU, and some of it is identified by SKU date. There are records and documents that show whether this product ever left Nestlé Purina's warehouses, or was delivered to a retailer and returned. Attachment A to this Declaration is an inventory list of such recall-related product that was never shipped and is currently being stored by Nestlé Purina.


5) In addition to the recall-related product described above, there is a substantial amount of unorganized material that Nestlé Purina received directly from retailers as a result of the recalls. Nestlé Purina is storing over 103,000 cases of wet pet food that comprises this material. The unorganized Mighty Dog material has been inventoried by Nestlé Purina. Approximately one tenth of the unorganized Alpo material has been inventoried. Whether or not inventoried, the unorganized product is comprised of some recall-related product as well as non-recall product: in some cases trash and open, broken or punctured product. Because these boxes contain trash and open, perishable food products, they are causing or have the potential to cause infestation and health and safety concerns. Specifically, pests like insects, rodents, and other varmints have been attracted to and infested that product, causing health and safety concerns.

6) The cost to Nestlé Purina of storing all of the above described product has been \$1,764,315.00 to date.

7) In the event Nestlé Purina is required to organize the Alpo recall-related product contained among its unorganized stored material, the cost to Nestlé Purina is estimated to be approximately \$1,105,749.00. I estimated this number based on the number of containers of unorganized material that have not been inventoried by Nestlé Purina multiplied by the hourly labor charges for inventorying and an inventorying rate of two boxes per hour (which rate is based on the rate experienced with the partial inventorying of unorganized material that Nestlé Purina has already conducted).

8) Attachment B to this Declaration is a set of true and accurate photographs depicting some of both the organized and unorganized material being stored by Nestlé Purina.

9) I have a general understanding of Dr. McCabe's proposed sampling plan for the Defendants' products. Nestlé Purina has over 500 cans of all SKU dates for all recalled Alpo and Mighty Dog product. Nestlé Purina will be able to gather its product in accordance with the sampling plan recommended by Dr. McCabe.



Adrian Palensky

ACKNOWLEDGMENT

STATE OF MISSOURI)
CITY) ss:
~~COUNTY~~ OF ST. LOUIS)

The foregoing declaration was acknowledged before me this 7th day of December, 2007, by Adrian Palensky.

Witness my hand and official seal.

Maureen L. Elbert
Notary Public

My commission expires:

MAUREEN L. ELBERT
NOTARY PUBLIC - NOTARY SEAL
STATE OF MISSOURI
ST. LOUIS CITY
MY COMMISSION EXPIRES MAY 28, 2010
COMMISSION NUMBER 00434424